

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	20cv2807 (DLC)
IN RE BIBOX GROUP HOLDINGS LIMITED	:	
SECURITIES LITIGATION	:	<u>MEMORANDUM OPINION</u>
	:	<u>AND ORDER</u>
	:	
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Appearances:

For lead plaintiff Alexander Clifford:  
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DENISE COTE, District Judge:

Plaintiff Alexander Clifford moves for an order pursuant to Fed. R. Civ. P. 4(f)(3) permitting alternative service for defendants Bibox Technology Ltd. ("Bibox Ltd."), Bibox Technology OÜ ("Bibox OÜ"), Wanlin "Aries" Wang ("Wang"), Ji "Kevin" Ma ("Ma"), and Jeffrey Lei ("Lei") (collectively, the "Unserved Defendants"). Plaintiff requests that he be allowed to serve the Unserved Defendants through their social media accounts, via corporate and personal email, and through the

registered agent of Bibox Group Holdings, Ltd. ("Bibox Holdings"), the sole defendant plaintiff has already served. For the following reasons, the plaintiff's request is granted.

**BACKGROUND**

The underlying suit is a securities class action seeking damages for the defendants' alleged unregistered buying and selling of securities in the form of digital tokens. The complaint alleges that the defendants operate almost exclusively on the internet. For instance, defendants listed offerings of digital tokens via Bibox's Twitter account and promoted "giveaways" or rewards on the Bibox website and Twitter account.<sup>1</sup> Visitors to Bibox's website who have questions about its privacy policy are encouraged to contact the company through an email address: support@bibox.zendesk.com. Besides the corporate email address, the other means of contacting Bibox listed on its website are electronic messaging services. The website does not list a physical mailing address for any entity.

On April 28, 2020, plaintiff served the registered agent for Bibox Holdings in the British Virgin Islands. Bibox Holdings has yet to appear in this action. Even before being formally served, a representative of Bibox Holdings responded to press inquiries about this action and publicly disputed that the

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<sup>1</sup> Plaintiff asserts that Bibox Holdings, Bibox OÜ, and Bibox Ltd. do business under the name "Bibox."

digital tokens Bibox buys and sells are securities. See Michael Kapilkov, Recent Class Action Lawsuit Could Cost Binance Billions of Dollars, CoinTelegraph (Apr. 10, 2020), <https://cointelegraph.com/news/recent-class-action-lawsuit-could-cost-binance-billions-of-dollars>.

The Unserved Defendants are closely related to Bibox Holdings. Bibox Ltd. and Bibox OÜ are subsidiaries of Bibox Holdings. Wang, Lei, and Ma are the co-founders of all three companies and are involved in the companies' operations. Wang is responsible for "picking and listing" digital assets on Bibox, Ma is the Business Vice-President, and Lei serves as CEO.

Plaintiff's efforts to serve the Unserved Defendants have been unsuccessful. Plaintiff discovered an Estonian address for Bibox OÜ and Bibox Ltd. On April 22, 2020, plaintiff initiated service on both of them under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, [1969] 20 U.S.T. 361, T.I.A.S. No. 6638 ("Hague Convention"). In July 2020, the Estonian Central Authority notified plaintiff that service could not be effected because they lacked an "apartment number" and "mailbox number".

On June 3, 2020, after obtaining an address for a Chinese company that may be affiliated with Ma, plaintiff initiated service under the Hague Convention through the Chinese Central

Authority. Plaintiff is not able to ascertain the status of service on Ma through the Chinese Central Authority.

In a 2018 filing in New York State Court, Wang represented that he is a resident of Long Island City, New York and that Bibox Ltd. has an office at 1120 6th Avenue, Suite 1507, New York, New York 10036. Plaintiff's process server was informed that neither Bibox Ltd. nor Wang was an occupant of that address. Plaintiff's investigation also produced an address for Wang in Long Island City. A doorman informed plaintiff's process server that Wang did not reside at that address.

The remaining unserved defendant is Lei. Despite engaging a private investigator, plaintiff has been unable to identify any physical address for Lei.

### **Discussion**

Generally, service on a foreign defendant pursuant to the Hague Convention is "mandatory" when the defendant resides in a country that is a signatory to the Hague Convention. Volkswagenwerk v. Aktiengesellschaft, 486 U.S. 694, 699 (1988); see, e.g., Burda Media, Inc. v. Viertel, 417 F.3d 292, 299-300 (2d Cir. 2005). The U.S. State Department advises that the People's Republic of China is a signatory to the Hague Convention. The Hague Convention itself, however, recognizes that it "shall not apply where the address of the person to be served with the document is not known." See S.E.C. v. Lines,

No. 07 CIV. 11387 (DLC), 2009 WL 3179503, at \*3 (S.D.N.Y. Oct. 2, 2009).

A court possesses wide discretion to order alternative service of process under Rule 4(f)(3). See Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1016 (9th Cir. 2002); S.E.C. v. Lines, No. 07 CIV. 11387(DLC), 2009 WL 2431976, at \*2 (S.D.N.Y. Aug. 7, 2009). Service by email may be appropriate where service by physical mail is not feasible. Rio Properties, 284 F.3d at 1017-18. Similarly, service via known social media accounts is permissible. See, e.g., F.T.C. v. PCCare247 Inc., No. 12 CIV. 7189(PAE), 2013 WL 841037, at \*5 (S.D.N.Y. Mar. 7, 2013). A plaintiff seeking permission to use alternative service for a foreign defendant under Rule 4(f)(3) must show why service pursuant to the Hague Convention is not required and that the proposed method is not prohibited by the Hague Convention or another applicable international law. Lines, 2009 WL 2431976, at \*2 (citation omitted). China has objected to the alternative methods of service listed in Article 10 of the Hague Convention. See China-Central Authority and Practical Information, Hague Conference on Private International Law, <https://www.hcch.net/en/states/authorities/details3/?aid=243> (last visited August 10, 2020). Service by email or social media are not among those listed in Article 10. Courts have understood objections to the alternative channels of service in

Article 10 to be limited to the methods specifically enumerated therein. See, e.g., PCCare247 Inc., 2013 WL 841037, at \*3.

Accordingly, China's objection to service by postal mail has not been taken to extend to service by electronic means. See, e.g., Sulzer Mixpac AG v. Medenstar Indus. Co., 312 F.R.D. 329, 331-32 (S.D.N.Y. 2015).

Additionally, in order to comply with due process requirements, alternative service must provide notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

"[I]n the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights." Id. at 317; accord S.E.C. v. Tome, 833 F.2d 1086, 1094 (2d Cir. 1987). "Courts have sensibly held that service on a high-level employee's corporate employer, or counsel for that employer, is 'reasonably calculated' to apprise the employee of the pendency of the action and therefore comports with due process." Stream SICAV v. Wang, 989 F. Supp. 2d 264, 279 (S.D.N.Y. 2013). Service through electronic methods such as email is more likely to provide notice where defendants are creatures of the internet who do business exclusively online. See, e.g., Philip Morris

USA Inc. v. Veles Ltd., No. 06 CV 2988(GBD), 2007 WL 725412, at \*3 (S.D.N.Y. Mar. 12, 2007).

Plaintiff has shown that further recourse to the Hague Convention is not required. Plaintiff has exhausted the reasonable efforts required under the Hague Convention. Furthermore, plaintiff's attempts to locate other suitable addresses have been unavailing. In light of the impracticability of plaintiff's efforts, the addresses of the Unserved Defendants are essentially unknown, rendering the Hague Convention service procedures inapposite. This includes service on Ma. Although the process of serving Ma through the channels set forth in the Hague Convention has not yet proven futile, plaintiffs have shown that such service poses the risk of significant delay. Plaintiffs initiated service on Ma through the Hague Convention two months ago and there is no means through which it can monitor the status of its request through China's Central Authority. See generally Fundamental Innovation Sys. Int'l, LLC v. ZTE Corp., No. 17 CV 01827-N, 2018 WL 3330022, at \*1 (N.D. Tex. Mar. 16, 2018) ("[T]he Central Authority in China does not provide a means for checking the status of a service request."). Finally, alternative service on the Unserved Defendants is particularly appropriate because Bibox has obscured the physical locations of Bibox Ltd., Bibox OÜ and its principals.


Service by email, social media, and Bibox Holdings's registered agent does not violate the Hague Convention or applicable international law. As explained above, China's objection to the methods of alternative service listed in Article 10 of the Hague Convention does not encompass service by email or through known social media accounts. Plaintiff's request is therefore consistent with applicable international law.

Plaintiff's proposed alternative method of service also comports with due process. As an initial matter, service on the registered agent of Bibox Holdings is reasonably calculated to put the Unserved Defendants on notice of the pendency of this action. Moreover, the proposed means of alternative service are reasonably calculated to reach the Unserved Defendants.

**Conclusion**

Plaintiff's July 31 request for alternative service is granted.

Dated: New York, New York  
August 10, 2020

  
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DENISE COTE  
United States District Judge